IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 212 of 1992

Judgment reserved on 1.8.2007

Date of decision: 7.8.2007

State of H.P. **…Appellant.**

Versus

Sat Pal **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes

For the appellant : Mr. Som Dutt Vasudeva, Addl. A.G. with Mr. D.S. Nainta, Dy. A.G.

For the respondent : Mr. Rajender Sharma, vice Pt. Om Parkash, Advocate.

Surjit Singh, Judge

Aggrieved by the judgment of the Sessions Court, whereby respondent Sat Pal has been acquitted of the charge under Sections 302 and 201 of the Indian Penal Code, the State has filed the present appeal.

2. First the relevant facts may be noticed. Appellant was sent up for trial for offences punishable under Sections 302 and 201 of the Indian penal Code on the following accusation. Deceased Jit Singh was employed as a labourer with the H.P. Public Works Department. He used to work under mate Baddar Din (PW-9) and leave his house every day in the morning for the site of work and return in the evening. On 20.9.1990 also he left his house for the site of work but did not return in the evening. His brothers and other members of the family thought that he might have

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Whether reporters of the local papers may be allowed to see the judgment?

gone to visit some relatives. He did not return even on 21st and 22nd September, 1990. This became a cause of concern for his brother PW-7 Wattan Chand and his mother PW-19 Jamuna Devi and they started searching for him. They made inquiries with PW-9 Baddar Din, who informed that the deceased worked on 20th, 21st and 22nd September, 1990 at Takoli Ghatta under his supervision and that on 20th he went with Bhagat Ram (PW-10). On further inquiry Bhagat Ram told Wattan Chand (PW-7), brother of the deceased that on reaching his place in his company, the deceased came to know from a sister of the respondent that the respondent had been bitten by a snake and, therefore, the deceased went to the house of the respondent to enquire about his health as his (deceased's) sister was married to the respondent. Bhagat Ram further informed Wattan Chand (Pw-7) that even on 21st and 22nd the deceased had gone to the house of the respondent and stayed there for the night. When inquiries were made with the respondent, he denied that the deceased had visited him on any of the aforesaid three days. On 26th September, 1990 in the morning Wattan Chand (Pw-7) went to Police Station, Bangana and lodged a report that his brother Jit Singh (deceased) had been missing since 20th September, 1990. Copy of the report is Ext. PG. As per this report the deceased was 5' – 4" tall (approximately) and had been wearing grey coloured shirt and Pyjama.

3. The respondent and his wife, i.e. the sister of the deceased, did not have cordial relations and, therefore, the sister of the deceased left the matrimonial home and started living with the deceased and his brother Wattan Chand and their mother Jamuna Devi. This was not to the liking of the respondent and he started nursing a grudge against them. He had once proclaimed that the deceased would have to pay a heavy price for providing shelter to his (respondent's) wife.

4. On 26th September, 1990 PW-18 Roshan Lal met the respondent in the evening. The latter asked PW-18 Roshan Lal if any clue of the deceased had been found. When Roshan Lal told him that the deceased had been at his place, the respondent told him that he had been at his place on Thursday, Friday and Saturday, i.e. 20th, 21st and 22nd September, 1990, but on Sunday he left his place after taking meals. When PW-18 Roshan Lal insisted that he should come out with the truth, the respondent started crying and told that he had committed a great sin as he had administered two pills of insecticide, which is used to protect wheat against insect infestation to the deceased and that he died because of that.

5. On 27.9.1990 PW-7 Wattan Chand again went to the Police Station and lodged an FIR Ext. PH in continuation of the earlier report dated 26.9.1990 regarding the disappearance of the deceased. In this report he got recorded that he had come to know from Baddar Din that the deceased had been attending his job at the site up to Saturday, i.e. 22nd September, 1990, but thereafter he did not come to the site of work and that he had been last seen with the respondent and so it was suspected that he (respondent) might have killed the deceased because of the strained relations between the two on account of the sister of the deceased having deserted the respondent.

6. Respondent was arrested on 29.9.1990. The same day he made a statement that he had thrown the dead body in Dhayunsar jungle and could get the same recovered. On the basis of the aforesaid statement, dead body was recovered from the aforesaid forest on 29.9.1990. Post mortem of the dead body was conducted by PW-2 Dr. Vijay Kumar Raizada. The dead body measured 5' – 7". It was wearing soiled clothes. Shirt was stripped and had cocacola colour. Pyjama was grey. Post mortem staining and rigor mortis were noticed. The body had

been eaten by maggots and flies over the back and hips and also the neck on back-side. No ligature mark was noticed. Also no injury had been noticed. Viscera was preserved and sent to the Chemical Examiner. As per report of the Chemical Examiner Ext. PBB Aluminium Phosphide was detected in the viscera.

7. Trial Court has acquitted the respondent holding that the evidence regarding the deceased having been last seen in the company of the respondent is doubtful, the testimony of PW-18 Roshan Lal that the respondent made extra-judicial confession to him did not inspire confidence and the evidence regarding the recovery of the dead body at the instance of the respondent was also doubtful.

8. Learned Additional Advocate General submitted that the evidence with respect to all the three circumstances, referred to above, is believable and the judgment of the trial Court is unsustainable.

9. It may be stated at the very outset that in a case where the conviction is sought on the basis of circumstantial evidence, the alleged circumstances are required to be proved beyond reasonable doubt, such circumstances should make a complete chain and the proved circumstances should be not only suggestive of the guilt of the accused, but also rule out any hypothesis consistent with his innocence.

10. To prove the allegation that the deceased was last seen in the company of the respondent, prosecution has examined PW-10 Bhagat Ram, PW-15 Hari Chand, PW-16 Jai Devi and PW-17 Kishan Chand.

11. Bhagat Ram (PW-10) has stated that on 20th September, 1990, on being asked by Mates Baddar Din and Tarlochan Singh, he took the deceased to his village for night stay as it was close to the site of the work and that on reaching his place, the deceased went to a shop and after return from that shop he told that he had met the sister of the respondent, who told that the respondent had suffered a snake bite and so

he wanted to go to the place of the respondent to enquire after his health and would stay there for the night. He stated that thereafter the deceased left his place along-with his belongings and next day he did his work as labourer at the site. As per the testimony of this witness, the deceased went to the house of the respondent on 20th September, 1990.

12. Next witness about the circumstance is PW-15 Hari Chand. He says that on 23.9.1990 he saw the respondent going in the company of a man, who was unknown to him, towards Tiunsar Jungle and that till the evening he did not see the respondent and that main returning from the side of the jungle. He also stated that on 30.9.1990 he was shown a dead body, which appeared to be of the same man whom he saw going with the respondent on 23.9.1990 towards Tiunsar forest. He stated that the man, who was accompanying the respondent, was carrying an umbrella Ext. P-9 and bag Ext. P-12. The umbrella and the bag were admittedly found lying near the dead body. In his cross-examination the witness admitted that the dead body was completely defaced and it was not possible to identify it by facial appearance. He also admitted that umbrella like Ext. P-9 and bag like Ext. P-12 are easily available in the market. The witness further admitted in the cross-examination that he did not disclose to anybody that he had seen the respondent going to the forest in the company of an unknown person on 23.9.1990 before he was called by the police to the forest to identify the dead body. Now, when the witness had not disclosed this fact to anybody, the police was not supposed to be knowing that he had seen the deceased in the company of the respondent and was, therefore, in a position to identify the dead body. This itself creates a serious doubt about the authenticity of the facts testified by this witness.

13. PW-16 Jai Devi has stated that on 23.9.1990 she went to the house of the respondent to borrow a ‘Darati’ for mowing grass and there

she saw someone sleeping covered with a 'Chadar' and on inquiry, the respondent told that he was his brother-in-law. The witness stated that she went to the house of the respondent in the morning. There does not seem to be any reason to disbelieve the testimony of the witness and, therefore, on the basis of her testimony it can be said that the deceased was at the place of the respondent on 23.9.1990 in the morning.

14. PW-17 Kishan Chand says that the respondent had visited the temple of Guga in Tiunsar Jungle around 12.00 or 1.00 in the noon on 23.9.1990. There does not seem to be any reason to disbelieve the testimony of this witness also and so it can be said that on 23.9.1990 the respondent had gone to the temple of Guga in Tiunsar Jungle. The witness, however, does not say that the respondent was accompanied by any person much less the deceased. Therefore, his testimony is relevant only to the extent that it proves that the respondent had been to Tiunsar forest on 23.9.1990 from where the dead body was recovered.

15. However, from the prosecution's own evidence it is made out that the respondent returned to his house on 23.9.1990 in the after-noon with a 'Darati' in his hand, while cries 'A Beera Oye' were heard in the forest on that day around 7.30 p.m. PW-19 Jamuna Devi, mother of the deceased, has very categorically stated that when the deceased did not return on Thursday, Friday and Saturday, i.e. 20th, 21st and 22nd September, 1990, she went to the house of the respondent, but the respondent was not there and his sister Sumna told that he had gone to see off the deceased Jit Singh, who had been spending his nights there for the last two – three days. She stated that in the after-noon the respondent also returned with a 'Darat' in his hand.

16. PW-11 Gurdev has stated that when he was returning home through a path in Tiunsar Jungle, he heard the cries "A Bira Oye" twice and that it appeared that someone was crying out of fear. From the

testimony of this witness it appears that the deceased was alive at 7.30 p.m.

17. The cause of the death, as per report of the Chemical Examiner Ext. PBB and the testimony of PW-2 Vijay Kumar Raizada, appears to be poisoning by Aluminium Phosphide. Prosecution's story, as suggested to PW-22 Jai Gopal, is that a phial containing four tablets of Aluminium Phosphide was available at the house of the respondent and out of that phial the respondent administered two tablets to the deceased. Prosecution has led evidence that the respondent made a disclosure statement on 2.10.1990 while in police custody that he could get recovered the Aluminium Phosphide tablets. The statement was recorded in the form of a memo which is Ext. PO. Pursuant to this disclosure statement, phial containing four tablets was recovered vide memo Ext. PP. Now, when only four tablets had been purchased through PW-22 Jai Gopal, as suggested to him by the prosecution in his cross-examination, and two of those four tablets had been administered to the deceased by the respondent, as per prosecution version, how is it that all the four tablets were there in the phial, which the respondent is alleged to have got recovered and which was taken into possession vide memo Ext. PP. This fact negates the prosecution story that the respondent killed the deceased by administering Aluminium Phosphide.

18. The facts that PW-11 Gurdev heard someone crying at 7.30 in the evening and all the four tablets, which had been procured through PW-22 Jai Gopal, were recovered from the house of the respondent on 2.10.1990, are suggestive that the deceased might have consumed the pesticide himself.

19. Evidence regarding extra-judicial confession does not inspire confidence. PW-18 Roshan Lal has stated that on 26.9.1990 the respondent told him that he had administered two pills of insecticide to Jit

Singh due to which he had expired. The witness has offered no explanation why he did not disclose this fact to Wattan Chand (PW-7), brother of the deceased, or Jamuna Devi (PW-19), mother of the deceased, even though it has come in his testimony that the two had been searching for the deceased since 23rd September, 1990. Not only this, he did not disclose this fact even to the police upto 2.10.1990 (he made the statement to the police for the first time on 2.10.1990) though, per his own testimony, the police had arrested the respondent on 26.9.1990 itself. It has come in the evidence, per testimony of PW-24 Krishan Chand Pathania and PW-8 Kishan Chand, that he (PW-18 Roshan Lal) had been with the police on 27th, 28th and 29th September, 1990 and was present even when the dead body was recovered. But still he did not disclose to the police or anybody else about the alleged confession made to him by the respondent.

20. There is another reason for not believing the testimony of this witness. He stands contradicted by his statement Ext. DC, which he made to the police on 2.10.1990. He was confronted with specific portion of the statement. He denied having stated those specific portions.

21. It is also the case of the prosecution that the respondent made disclosure statement leading to the discovery of the dead body. To prove this fact the prosecution has examined PW-8 Kishan Chand and PW-24 SI Krishan Chand Pathania. Kishan Chand PW-8 has stated that on 29.9.1990 at Panchayat Ghar the respondent made disclosure statement that he had kept the dead body in Jungle Tiunsar at a place known as ‘Thakran Da Panga’ and could get the same recovered. He stated that the respondent led the police and the witness to the site disclosed by him in the statement and got recovered the dead body, which was identified to be that of Jit Singh by Rattan Chand, Chowkidar, Wattan Chand (PW-7) brother of the deceased and Roshan Lal (PW-18).

22. PW-24 SI Krishan Chand Pathania stated that he arrested the respondent on 29.9.1990 and interrogated him at Panchayat Ghar Sohari and he made a statement that he had kept hidden the dead body in Tiunsar Jungle and could get the same recovered. He stated that the statement made by the respondent was reduced into writing in the form of memo Ext. PJ. Further he stated that the respondent then led the police party and the witnesses to the site where the dead body was lying. He stated that the dead body was taken into possession vide memo Ext. PK. Testimony of PW-24 Krishan Chand Pathania that the deceased was arrested on 29.9.1990 is falsified by PW-18, who says that the respondent had been arrested on 26.9.1990. Statement of PW-8 Kishan Chand also suggests that the respondent was in the custody of the police even on 28th September, 1990. There is also contradiction in the testimony of PW-8 Kishan Chand and PW-24 Krishan Chand Pathania about the site where the dead body was stated (by the respondent) to have been kept. PW-8 Kishan Chand says that the respondent told that he had kept the dead body in 'Thakran Da Panga', but PW-24 Krishan Chand Pathania, SI does not say so. He simply says that the respondent had told that the dead body had been kept hidden by him in Tiunsar Jungle. This statement of PW-24 is not only contrary to what PW-8 testified, as noticed here-in-above, but is also different from the recorded version of the statement contained in Ext. PJ. As per Ext. PJ, the respondent told that he had thrown the dead body in the jungle. But as already noticed, PW-24 says that the respondent told that he had kept hidden the dead body in the forest. Words "throwing" and "keeping hidden" have totally different meanings. Again even though PW-8 Kishan Chand says that the respondent told that he had kept the dead body in 'Thakran Da Panga', in the memo. of statement Ext. PJ it is not so recorded.

23. In view of the above discussion, we are of the considered view that the evidence on record is not sufficient to hold the respondent guilty. Consequently, the appeal is dismissed.

(Surjit Singh)
Judge

Aug. 7, 2007 (BC)

(Surinder Singh)
Judge